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FROM: Janice Messer

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F&B FILE: 301380 REC: 2853

TO: Mr. Hasan Kizou, Director
Group Art Unit 2662

TELEPHONE: (800) 786-9199

FAX: (571) 273-8300

MESSAGE

Re: U.S. Patent Application Serial No. 08/990,096

Filed: December 12, 1997

Entitled "NETWORK ARCHITECTURE WITH QUALITY OF SERVICE";

Inventor: Picher-Dempsey

Dear Mr. Kizou,

As we discussed, attached please find all documentation pertaining to the above-referenced case. The Petition to Withdraw Abandonment details the efforts made to revive the application and file the Appeal Brief. Please contact me if you have questions or need further information. I appreciate your effort to follow-up on this matter.

Best regards,

Janice Messer

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JANICE MESSER AT 303/607-3603.

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Initial: JMM

Date: 8/24/05 *FILE*

PTO Stamp indicates receipt of: ☒ Patent Matter ☐ Trademark Matter

Attorney Docket No.: 74120-301380

Applicant: PICHER-DEMPSEY

Title: SECURE NETWORK ARCHITECTURE WITH QUALITY OF SERVICE

U.S. Serial No.: 08/990,096

Filed/Issued Date: December 12, 1997

Express Mail No.: EV572274802US

PETITION TO WITHDRAW APPARENT HOLDING OF ABANDONMENT WITH EXHIBITS:

- (1) COPY OF RETURN POSTCARD RECEIPT;
- (2) APPEAL BRIEF;
- (3) PAIRS PRINTOUT;
- (4) COPY OF GRANTED NOTICE;
- (5) COPY OF PETITION TO REVIVE;
- (6) DECLARATION BY JANICE MESSER



EV572274802US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In Re the Application of:

) Group Art Unit: 2662

MAR 02 2006

PICHER-DEMPSEY

) Examiner: Nguyen, Hanh N.

Serial No.: 08/990,096

Filed: December 12, 1997

Atty. File No.: 74120-301380

For: SECURE NETWORK
ARCHITECTURE WITH
QUALITY OF SERVICE) "EXPRESS MAIL" MAILING LABEL NUMBER: EV572274802US
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P.O. Box 1450
Alexandria, VA 22313**PETITION TO WITHDRAW APPARENT HOLDING OF ABANDONMENT**

Dear Sir:

Applicant is filing this Petition to Withdraw Apparent Holding of Abandonment under 37 CFR § 1.181(a), MPEP 711.03(c) and MPEP 1002.02(c)(3), to withdraw an apparent holding of abandonment as to the above-identified patent application. Although Applicant has not received a formal Notice of Holding of Abandonment, based on conversations with U.S. Patent Office personnel, it has become apparent that the application had been held abandoned for failure to file an Appeal Brief within a two-month period.

The undersigned encloses the following in support of this Petition:

1. A true copy of a return post card (Exhibit 1) indicating receipt by the PTO of an Appeal Brief filed Monday, May 13, 2002.
2. A true copy of the Appeal Brief (Exhibit 2) filed on Monday, May 13, 2002.
3. A print out of a screen shot of PAIR (Exhibit 3), printed on August 23, 2005, indicating a status of "Abandoned -- Failure to Respond to an Office Action."
4. A true copy of a Notice Granting Petition to Revive (Exhibit 4) dated March 12, 2002, and setting forth a deadline to file an Appeal Brief, the deadline expiring 2 months from the date of the Notice Granting Petition to Revive.

5. A true copy of the Petition to Revive (Exhibit 5), which was entered January 4, 2002.
6. An Affidavit (Exhibit 6) signed by Janice Messer, a paralegal at Faegre & Benson, attesting to recent events in determining the status of the application, including content of a conversation that Janice had with a person in the Petitions Branch of the PTO, who indicated that the application is currently held abandoned for failure to timely file an Appeal Brief.

Based on the aforementioned documents, provided herewith as Exhibits 1 - 6, the undersigned understands that the PTO apparently holds the present application to be abandoned for failure to timely file an Appeal Brief, even though the PAIR status indicates a holding of abandonment for failure to respond to an Office Action.

Based on the Notice Granting Petition to Revive, the undersigned understands that the first holding of abandonment for failure to respond to an Office Action was withdrawn by the PTO. The undersigned also understands that the PTO mailed to the Applicant's agent at the time, a return post card acknowledging receipt of the Appeal Brief filed on May 13, 2002.

Based on the return receipt post card (Exhibit 1) acknowledging PTO's timely receipt of the Appeal Brief, Applicant petitions the Commissioner to withdraw the apparent holding of abandonment for failure to file an Appeal Brief.

It is believed that no fees are due with this Petition. If any such fees are due, however, then please debit such fees to Deposit Account 06-0029 and notify us of the same.

Respectfully submitted,

FAEGRE & BENSON LLP
Customer Number: 35657

Date: 8/24/05

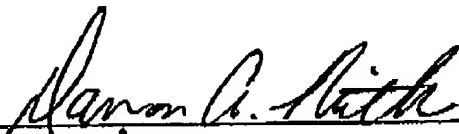
By: 
Damon A. Rieth
Atty. Reg. No. 52,167
Telephone: 303-447-7739

EXHIBIT 1

PATENT	
ATTORNEY DOCKET NO.: <u>12128-027001</u>	
The Patent and Trademark Office date stamp sets forth the date of receipt of:	
Applicant or Patentee <u>Heidi Picher-Dempsey</u>	
No. (Application, Appeal, Interference, Patent Reexam) <u>08/990,096</u>	
Filing or Issue Date <u>December 12, 1997</u>	
Title <u>Secure Network Architecture with Quality of Service</u>	
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<input type="checkbox"/> Assignment	<input type="checkbox"/> Status Inquiry
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<input type="checkbox"/> Small Entity Statement	
<input type="checkbox"/> Other _____	
Atty./Sec. DLF Client/ Initials <u>KFK/kbl</u> Matter Name <u>Genuity Corp.</u> Date <u>5/13/02</u>	

EXHIBIT 2

Attorney's Docket No.: 12128-027001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Heidi Picher-Dempsey Art Unit : 2738
Serial No. : 08/990,096 Examiner : Hanh Nguyen
Filed : December 12, 1997
Title : SECURE NETWORK ARCHITECTURE WITH QUALITY OF SERVICE

BOX AF

Commissioner for Patents
Washington, D.C. 20231

BRIEF ON APPEAL**(1) Real Party in Interest**

The real party in interest is the assignee, Genuity, Inc.

(2) Related Appeals and Interferences

There are no related appeals or interferences.

(3) Status of Claims

Claims 1-24 stand finally rejected.

(4) Status of Amendments

Amendments filed on July 25, 2001 will not be entered according to the advisory action dated August 17, 2001 since the Examiner states they raise new issues that would require further consideration and/or search. On August 4, 2001, the above-identified application became abandoned for failure to reply to an Office Action mailed May 3, 2001. Applicant submitted a petition under 37 C.F.R. §1.137(b) on January 4, 2002 to revive the above-identified application.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

May 13, 2002
Date of Deposit

Signature

Karen B. LaCorda
Typed or Printed Name of Person Signing Certificate

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Page : 2

Applicant's Docket No.: 12128-027001

On March 12, 2002 the petition was granted, requiring the filing of this appeal brief two months from the date of the decision.

(5) Summary of Invention

Applicant's invention, contrary to conventional approaches, presents a new and improved system and method in a wide area network composed of some number of secure local networks and an Internet Service Provider (ISP) backbone in which Local Area Network (LAN) hosts are able to indirectly access network routers through an ISP Quality of Service (QoS) module to request that information transmitted during certain specified sessions be given priority treatment by the network. The invention, as claimed in independent claims 1, 6, 11, 17, 19 and 24, is directed to a server system (claims 1, 11, 19, 24) and method (claims 6, 17) for establishing a communication path connecting an originating router to a destination router. Referring to Fig. 1, copied below, (a) an Internet Service Provider (ISP) maintains a wide area network (WAN) 150 to which are attached several LANs 110, 130, and 140. WAN 150 is composed of a number of interconnected WAN routers 116, 118, and 122 typically referred to as a "Backbone"...

The system and method of claims 1, 6, 11, 17 and 24 also include at least one IP/QoS module 120 that is independent of the communication path, i.e., server, with an associated firewall 124.

WAN routers 116, 118, and 122 are RSVP capable and could be, for instance, Cisco 7507 routers running the Cisco 11.2 Internet Operating System (IOS). In addition to providing standard best-effort Internet Protocol Service, the WAN routers serve to receive packets of information from the LANs, determine whether or not the packet has been designated for QoS service, and if so, operate to transmit the packet to some destination router in a manner which provides the proper QoS.

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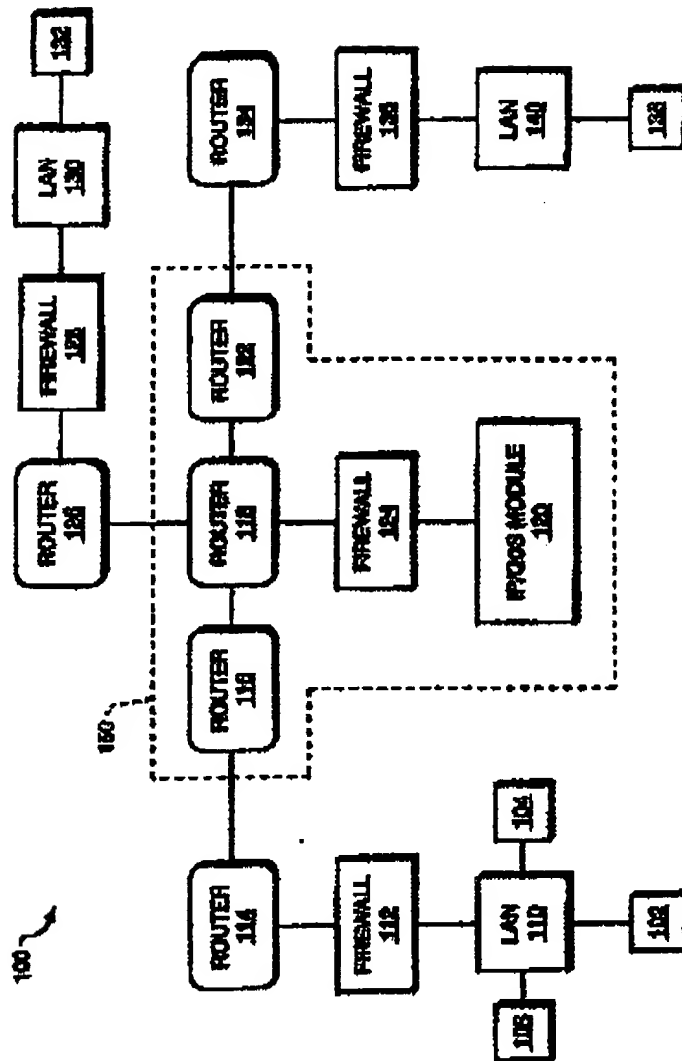


FIG. 1

The IP/QoS module 120 and associated firewall module 124 are located at a QoS hosting the site of ISP 150. Firewall module 124 servers to monitor traffic to the site to ensure that all traffic comes from registered and authorized users. As mentioned previously, firewall modules are commercially available and could be composed of, for instance, an IBM/PC with IP security software (IPSEC). IP/QoS module 120 could be any workstation running, for example, the

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Solaris 2.5 operating system. Firewall 124 associated with IP/QoS module 120 is connected to router 118 by a communication line, such as a T1, and IP/QoS module 120 is connected to firewall 124 via a local communication line, such as an Ethernet connection.

The IP/QoS module 120 serves to provide a session reservation setup application to the user upon request, to accept requests for QoS service from users, to transmit these user QoS requests to the WAN routers, to monitor the routers to determine if the QoS request has been established or not, to then notify the user of the state of the QoS request, and is independent of the communication path between any origination and destination system. (Page 5, lines 5-20, page 6, lines 1-6).

(6) Issues

Whether claims 1-24 are obvious under 35 USC 103(a) in light of U.S. Patent 5,995,503 ("Crawley") in view of U.S. Patent 5,968,176 ("Nessett") where applicant's invention represents a classic reversal of long standing practice and wisdom and Nessett, the reference used in combination with Crawley to reject the claims, merely discloses the conventional approach.

(7) Grouping of Claims

Claims 1-5, 6-10, 11-16, 17, 18, 19-23 and 24 stand or fall together.

(8) Argument

A. The Rejection

Claims 1-24 stand rejected under 35 USC 103(a) on the basis of Crawley in view of Nessett.

Crawley is cited for disclosure of a network configuration "with multiple hosts and multiple routers connected as shown in Fig. 1 where host H1 (Fig. 1) establishes a communication path by requesting a QoS for a data flow to host H4 (Fig. 1) at step 170. (col. 7, lines 28-33). Crawley does not disclose a server having a location that is independent of the path." Nessett is cited for disclosure of "a WAN 100 that is connected between private networks LAN 101, LAN 102 and PSTN 105. An access server 121 of the LAN 101 connects between

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routers 107, 109 and routers 112 via PSTN 105. It is clearly that the access server 121 is located separated from each of the routers. See Fig. 2 and col. 10, lines 25-58."

The Examiner's rejections are contrary to fundamental doctrines governing resolution of obviousness questions. Inventions are *not* obvious when they defy long standing conventional practice. In point of fact, the access server 121 of Nessett is not independent of the path and represents the conventional approach. With respect to the access server, Nessett recites:

There are two major applications of Access Server equipment. The first is to provide remote access to private intranets. In such cases the Access Server is located within the private intranet, allowing remote access by stand-alone end systems and remote office routers through the PSTN. The second application of remote access products is within Internet Service Provider (ISP) networks. These give subscribers access to the ISP content equipment as well as the ISP's Internet connections. These two applications have somewhat different security requirements, which are discussed in more detail below. (Col. 14, lines 62-67, col. 15, lines 1-5) (Emphasis added).

The two functions of remote access equipment, line servicing and packet processing, are traditionally implemented within the same chassis. (Col. 15, lines 6-8)(Emphasis added).

Another security service important to Remote Access is filtering. Access Servers (either in their integrated or split configurations) are natural points to place firewall functionality. This can take one of two forms. The simplest is to provide traditional firewall packet filtering in Access Servers and Packet Servers (in the Split Service Access case). Such filtering rules apply to all traffic transiting the equipment. (Col 15, lines 66-67, col. 16, lines 1-5).

The more advanced form of filtering establishes filtering rules that apply on a per connection basis. That is, when a user establishes a connection through an Access Server, a set of filtering rules specific to that user are drawn from a filtering database. These rules are then installed into the Access Server, which applies them only to traffic traveling over that connection. (Col. 16, lines 5-12) (Emphasis added).

It is clear that the access server is path dependent and describes the conventional approach to routing packets between an originating system and a destination system.

The office action then purports to apply the claim language to Nessett in the following passage:

An access server 121 of the LAN 101 connects between routers 107, 109 and routers 112 via PSTN 105. It is clearly that the access server 121 is located separated from each of the routers (a server that having a location that is independent of the path).

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Applicant argues the server of Nessel is has a location that is not independent of the communication path. Examiner does not agree because the access server 106, in Fig. 2, is a separate server and located off from terminal 113.

B. The Claims Are not Rendered Obvious by Crawley and Nessel

Nessel's fundamental teaching is that an access server is path dependent, which represents long standing conventional practice. In this respect, Nessel teaches away from the claimed invention.

While there is a disclosure of an access server in Nessel, Nessel merely states that the access server for line servicing is connected to the PSTN on one side and to a WAN on the other side and the access server for packet processing is connected on one side to a private intranet or ISP and to a WAN on the other side (Col. 15, lines 13-16) (Emphasis added).

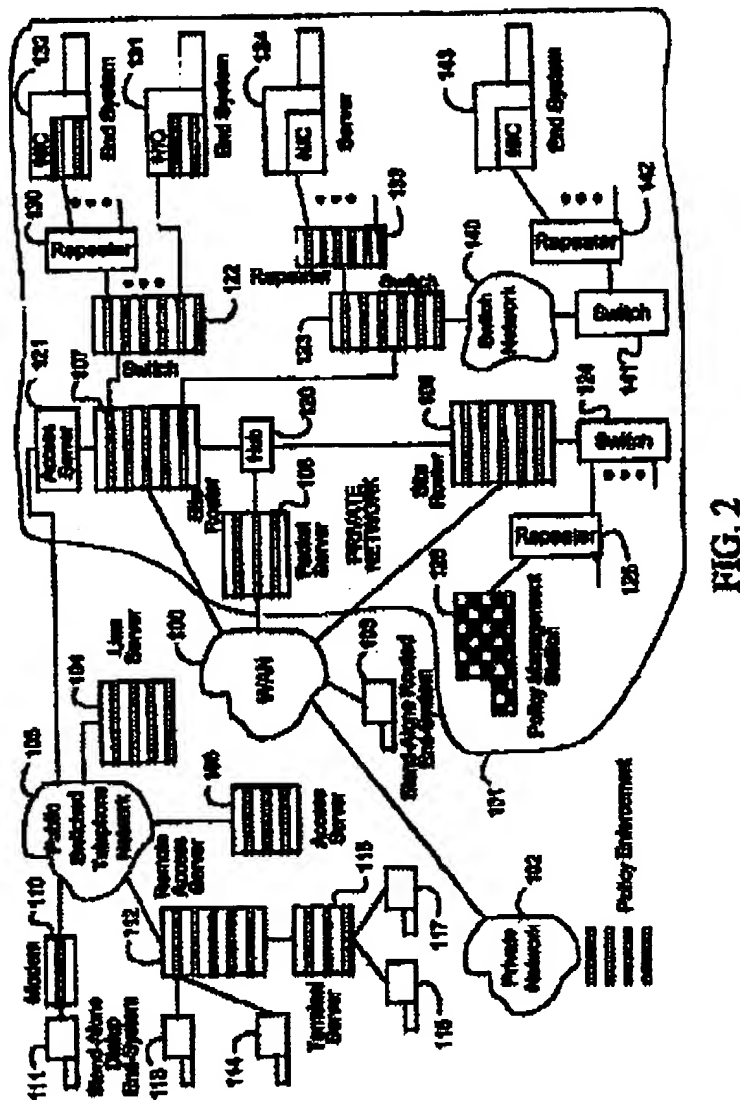
The combination of references fails to disclose or suggest the server that is independent of the path that is required by claims 1, 6, 11, 17, 19 and 24. Claims 1, 6, 11, 17, 19 and 24 recite the server system having a location that is independent of the communication path.

In the rejection, it is asserted that the access server 106, in Fig. 2, is a separate server and located off from terminal 113.

As is clear from Fig. 2, copied below, the access server 106 is part of the communication path from terminal 113 through PSTN 105 and represents the conventional approach. "End systems can be directly connected to remote access equipment (e.g., Terminal Servers) or through the Public Switch Telephone Network (PSTN). The more general situation is connection through the PSTN, which requires the use of access servers." (Col. 14, lines 57-61)(Emphasis added). There is absolutely no support in the office action that "...the access server 121 is located separated from each of the routers..." and thus "...having a location independent of the path."

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Nessett does not make up the deficiencies of Crawley and moreover teaches away from the invention. As discussed above, access server 106 serves to provide access to subscribers of ISP content "as well as the ISP's Internet connections." (Col. 15, lines 1-3). These functions, namely "line servicing and packet processing," Nessett continues, "are traditionally implemented within the same chassis" so when customers use these systems, the access server for line servicing is connected to the PSTN on one side and to a WAN on the other side and the access

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server for packet processing is connected on one side to a private intranet or ISP and to a WAN on the other side (Col. 15, lines 11-13). By this very example provided in Nessett the access server 106 *must* be part of the communication path. Otherwise, the intended functions of the access server 106 would simply not work.

Moreover, in order to provide security service in the access servers, traditional firewall packet filtering is performed so that "all traffic transiting" the server is filtered. (Col. 15, lines 66-67, col. 16, lines 1-5). Nessett elaborates that "the more advanced form of filtering establishes filtering rules that apply on a per connection basis... [and] when a user establishes a connection through an Access Server, a set of filtering rules specific to that user are drawn from a filtering database... [and] rules are then installed into the Access Server, which applies them only to traffic traveling over that connection." (Col. 16, lines 6-12). This description shows that if the location of the access server 106 were independent of the communication path, filtering packets as suggested in this example would not be possible because there would be no traffic to filter. Thus, the access server 106 in Nessett is required by its own functionality to be an integral part of the communication path with which it connects.

Thus the combination of references nowhere discloses or suggests a server having a location that is independent of the path, as required by independent claims 1, 6, 11, 17, 19 and 24. Accordingly, independent claims 1, 6, 11, 17, 19 and 24 are patentable under 35 USC 103(a).

The remaining claims depend on independent claims 1, 6, 11, 17, 19 and 24 and are allowable with them.

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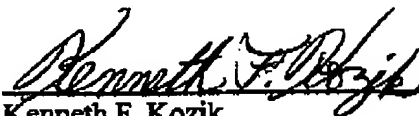
Conclusion

For the foregoing reasons, it is respectfully submitted that the final rejection should be reversed and the application should be allowed.

The brief fee of \$320 is enclosed. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: May 13, 2002


Kenneth F. Kozik
Reg. No. 36,572

Fish & Richardson P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

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Appendix of Claims

1. A server system for establishing a communication path connecting an originating router to a destination router via other routers along the path, the server system having a location that is independent of the communication path, comprising:
 - a server adapted to
 - receive a session request for establishing the communication path for transmitting information from the originating router to the destination router;
 - send a message to the originating router in response to the session request, the message including a request to reserve resources for transmitting the information; and
 - monitor the routers in the communication path to determine whether sufficient resources exist to establish the communication path in accordance with the session request.
2. The server system according to claim 1, wherein the session request includes a request for a quality of service (QoS service) session.
3. The server system according to claim 2, wherein the session request includes parameters for transmitting information along the communication path in accordance with the QoS service.
4. The server system according to claim 1, wherein sending a message includes presenting the message to the originating router as a Telnet message.
5. The server system according to claim 1, further comprising:
 - establishing the communication path if sufficient resources are determined to exist at the routers in the communication path.
6. A method for establishing a communication path connecting an originating router to a destination router via other routers along the communication path, comprising:
 - receiving a session request at a server for establishing a communication path for transmitting information to the destination router, the server having a location that is independent of the communication path;
 - sending a message to the originating router in the communication path in response to the session request, the message including a request to reserve resources for transmitting the information; and

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monitoring the routers in the communication path to determine whether sufficient resources exist to establish the communication path in accordance with the session request.

7. The method according to claim 6, wherein receiving a session request further includes receiving a request for a quality of service (QoS service) session.

8. The method according to claim 7, wherein receiving a session request further includes receiving parameters for transmitting information along the communication path in accordance with the QoS service.

9. The method according to claim 6, wherein sending a message includes presenting the message to the originating router as a Telnet message.

10. The method according to claim 6, further comprising:
establishing the communication path if sufficient resources are determined to exist at the routers in the communication path.

11. A network communication system for establishing a transmission path, comprising:

- an originating router coupled to a host in a first local area network;
- a destination router coupled to another host in a second local area network; and
- a server having a location that is independent of the transmission path, coupled to the originating router, for receiving a session setup request from the host, said server including:
 - a session setup module for sending a message to the originating router in response to the session setup request, the message including a request to reserve resources for transmitting traffic along the transmission path from the originating router via other routers to the destination router;

and

- a node server module for monitoring the routers along the transmission path to determine whether sufficient resources exist to establish the transmission path in accordance with the session setup request.

12. The network communication system according to claim 11, wherein the session setup request includes a request for a quality of service (QoS service) session.

13. The network communication system according to claim 12, wherein the session setup request further includes parameters for transmitting information along the communication path in accordance with the QoS service.

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14. The network communication system according to claim 11, wherein the session setup module presents the message to the originating router as a Telnet message.

15. The network communication system according to claim 11, wherein the session setup module notifies the host that the transmission path has been established if the routers in the transmission path have sufficient resources to establish the transmission path.

16. The network communication system according to claim 11, wherein the server further includes:

a database server for checking whether the session setup request is authorized.

17. A method for establishing a communication path connecting an originating router to a destination router via other routers along the communication path, comprising of:

receiving a session request at a server for establishing a communication path for transmitting information to the destination router, the server having a location that is independent of the communication path;

sending a resource reservation request to a router in the communication path to reserve resources in accordance with the session request; and

monitoring the routers in the communication path to determine whether resources exist to establish the communication path.

18. A computer program residing on a computer readable medium comprising instructions for causing a computer to:

receive a session request at a server for establishing a communication path from an originating router for transmitting information via other routers to a destination router, the server having a location that is independent of the communication path;

send a resource reservation request from the server to the originating router to reserve resources in accordance with the session request; and

monitor the routers in the communication path at the server to determine whether resources exist to establish the communication path.

19. A central server system comprising a QoS server connected to a series of routers, the server managing QoS matters for a session established along a communication path from an

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originating router via other routers to a destination router, the central server system having a location that is independent of the communication path.

20. The system of claim 19 wherein the QoS server is adapted to:
receive a session request from the originating router for establishing the communication path for transmitting information to the destination router;

send a message to the originating router in response to the session request, the message including a request to reserve resources for transmitting the information; and

monitor the routers in the communication path to determine whether sufficient resources exist to establish the communication path in accordance with the session request.--

21. The system of claim 20 wherein the session request includes parameters for transmitting information along the communication path in accordance with the QoS service.

22. The system of claim 20 wherein the message sent to the original router is presented to the originating router as a Telnet message.

23. The system of claim 20 wherein the QoS server is further adapted to:
establish the communication path if sufficient resources are determined to exist at the routers in the communication path.

24. A server system for establishing a communication path connecting an originating router to a destination router via other routers along the communication path, the server system having a location that is independent of the communication path, comprising:

a server adapted to

means for receiving a session request for establishing the communication path for transmitting information from the originating router to the destination router;

means for sending a message to the originating router in response to the session request, the message including a request to reserve resources for transmitting the information; and

means for monitoring the routers in the communication path to determine whether sufficient resources exist to establish the communication path in accordance with the session request.

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EXHIBIT 3



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PATENT APPLICATION INFORMATION RETRIEVAL



Search results as of: 8-23-2005::17:4:35 E.T.

Search results for application number: 08/990,096			
Application Number:	08/990,096	Customer Number:	25764
Filing or 371(c) Date:	12-12-1997	Status:	Abandoned -- Failure to Respond to an Office Action
Application Type:	Utility	Status Date:	11-19-2001
Examiner Name:	NGUYEN, HANH N	Location:	ELECTRONIC
Group Art Unit:	2662	Location Date:	-
Confirmation Number:	9688	Earliest Publication No:	-
Attorney Docket Number:	06592.0044-0	Earliest Publication Date:	-
Class/ Sub-Class:	370/410	Patent Number:	-
First Named Inventor:	HEIDI PICHER-DEMPSEY, LITTLETON, MA (US)	Issue Date of Patent:	-
Title Of Invention:	SECURE NETWORK ARCHITECTURE WITH QUALITY OF SERVICE		

Search Options

<input type="checkbox"/> Assignments
<input type="checkbox"/> Continuity Data
<input type="checkbox"/> Image File Wrapper

File History	
Date	Contents Description
06-30-2005	IFW TSS Processing by Tech Center Complete
06-21-2005	Miscellaneous Incoming Letter
06-03-2005	Correspondence Address Change
08-05-2004	Correspondence Address Change
08-05-2004	Change in Power of Attorney (May Include Associate POA)
03-12-2002	Petition to Revive Application - Granted
03-07-2002	Correspondence Address Change
01-04-2002	Petition Entered
11-27-2001	Mail Abandonment for Failure to Respond to Office Action
11-19-2001	Abandonment for Failure to Respond to Office Action
08-17-2001	Mail Advisory Action (PTOL - 303)
08-16-2001	Advisory Action (PTOL-303)
08-08-2001	Date Forwarded to Examiner

PAIR Page

07-30-2001	Amendment after Final Rejection
08-03-2001	Mail Final Rejection (PTOL - 326)
05-03-2001	Final Rejection
03-30-2001	Date Forwarded to Examiner
03-26-2001	Response after Non-Final Action
01-04-2001	Mail Non-Final Rejection
01-02-2001	Non-Final Rejection
11-21-2000	Preliminary Amendment
11-28-2000	Date Forwarded to Examiner
11-21-2000	Continuing Prosecution Application - Continuation (ACPA)
11-21-2000	Mail Express Abandonment (During Examination)
11-21-2000	Express Abandonment (during Examination)
11-21-2000	Request for Extension of Time - Granted
11-21-2000	Workflow - Request for CPA - Begin
10-06-2000	Case Docketed to Examiner in GAU
05-22-2000	Mail Final Rejection (PTOL - 326)
05-19-2000	Final Rejection
03-15-2000	Correspondence Address Change
03-14-2000	Date Forwarded to Examiner
03-09-2000	Response after Non-Final Action
12-10-1999	Mail Non-Final Rejection
12-06-1999	Non-Final Rejection
06-19-1998	Application Is Now Complete
06-01-1998	Case Docketed to Examiner in GAU
03-24-1998	Notice Mailed--Application Incomplete--Filing Date Assigned
03-16-1998	IFW Scan & PACR Auto Security Review
07-17-1998	Preexamination Location Change
01-26-1998	Initial Exam Team nn

EXHIBIT 4



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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www.uspto.gov

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KFK

Paper No. 22

Mr. David Feigenbaum, Esq.
Fish and Richardson PC
225 Franklin Street
Boston, MA 02110

COPY MAILED**MAR 1 2 2002****OFFICE OF PETITIONS****ON PETITION**

In re Application of
Heidi Fischer-Dempsey
Application No. 08/990,096
Filed: December 12, 1997
Attorney Docket No. 12128-027001

This is a decision on the petition under 37 CFR 1.137(b), filed January 4, 2002, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed May 3, 2001, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 4, 2001.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$920.00 extension of time submitted with the petition on January 4, 2002 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The two-month period for filing an appeal brief in triplicate (accompanied by the fee required by 37 CFR 1.17(c)), runs from the date of this decision.

Telephone inquiries concerning this decision should be directed to Cheryl Gibson-Baylor at (703)308-5111, or in her absence, Sherry Brinkley at (703)305-9220.

The application file is being forwarded to Technology Center 2700, Art Unit 2738.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Docketed By: <i>Sherry Brinkley</i>	Docketed By: <i>Sherry Brinkley</i>
Action Code: <i>Appellate</i>	Action Code: <i>Appellate</i>
Base Date: <i>10-12-01</i>	Base Date: <i>10-12-01</i>
Due Date: <i>12-12-01</i>	Due Date: <i>5/12/02</i>
Deadline: <i>12-12-01</i>	Deadline: <i>5/12/02</i>
Initial: <i>SMG</i>	Initial: <i>Lja</i>

EXHIBIT 5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Heidi Picher-Dempsey Art Unit : 2738
Serial No. : 08/990,096 Examiner : Hanh Nguyen
Filed : December 12, 1997
Title : SECURE NETWORK ARCHITECTURE WITH QUALITY OF SERVICE

Commissioner for Patents
Washington, D.C. 20231

PETITION TO REVIVE APPLICATION UNDER 37 CFR §1.137(b)

Applicant hereby petitions under 37 CFR §1.137(b) to revive the above application, which was abandoned on November 3, 2001 for failure to respond to the advisory action mailed August 17, 2001.

Enclosed is 1) a proposed response to the office action to continue prosecution of the application and 2) a check for \$1280 in payment of the petition fee by a large entity as set forth in 37 CFR §1.17(m).

Applicant submits that the entire period of delay was unintentional.

Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: December 4, 2001

Ellen Sein Aye
Ellen Sein Aye
Reg. No. 42,729

Fish & Richardson P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20344154.doc

CERTIFICATE OF MAILING BY FIRST CLASS MAIL
I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

Date of Deposit: 12/5/01

Signature: Terri L. Knox

Typed or Printed Name of Person Signing Certificate

Attorney's Docket No.: 12128-027001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Heidi Picher-Dempsey Art Unit : 2738
Serial No. : 08/990,096 Examiner : Hanh Nguyen
Filed : December 12, 1997
Title : SECURE NETWORK ARCHITECTURE WITH QUALITY OF SERVICE

BOX AF
Commissioner for Patents
Washington, D.C. 20231

NOTICE OF APPEAL

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the action dated May 3, 2001, finally rejecting claims 1-24.

A petition for an extension of time under 37 CFR §1.136 to extend the time to respond to the final rejection for 3 month(s) to and including November 3, 2001 is enclosed.

A check in the amount of \$320 for the appeal fee is enclosed. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: December 4, 2001

Ellen Sein Aye
Ellen Sein Aye
Reg. No. 42,729

Fish & Richardson P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
Telephone: (617) 542-5070
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Date of Deposit

12/5/01

Signature

Terri L. Knox

Typed or Printed Name of Person Signing Certificate

Terri L. Knox

Attorney's Docket No.: 12128-027001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Heidi Picher-Dempsey
Serial No. : 08/990,096
Filed : December 12, 1997
Title : SECURE NETWORK ARCHITECTURE WITH QUALITY OF SERVICE

Art Unit : 2738
Examiner : Hanh Nguyen

Commissioner for Patents
Washington, D.C. 20231

PETITION FOR THREE-MONTH EXTENSION OF TIME

Pursuant to 37 CFR §1.136, applicant hereby petitions that the period for response to the action dated May 3, 2001, be extended for three months to and including November 3, 2001.

Enclosed is a check for \$920 for the required fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: December 4, 2001

Ellen Sein Aye
Ellen Sein Aye
Reg. No. 42,729

Fish & Richardson P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

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Date of Deposit 12/5/01
Signature Terry L. Knox
Typed or Printed Name of Person Signing Certificate Terry L. Knox

PATENT

ATTORNEY DOCKET NO.: 12128-027001

The Patent and Trademark Office date stamp sets forth the date of receipt of:

Applicant or Patentee Heidi Picher-DempseyNo. (Application, Appeal, Interference, Patent, Reexam) 08/990,096Filing or Issue Date December 13, 1997Title: Secure Network Architecture with Quality of Service

- ☐ Transmittal Letter (2 Copies) ☐ With Pet. for Ext.
☐ Assignment ☐ Status Inquiry
☐ Amendment/Response _____ Pages ☐ Declaration
☐ Maintenance Fee ☐ Request Certificate of Correction
☒ Check \$ 1280, \$920, \$320 ☒ Notice of Appeal
☐ Deposit Account Order Form (2 Copies) ☐ Appeal Brief (3 Copies) _____ Pages
☐ Issue Fee ☐ Request Patent Copies ☒ Petition for Extension Time
☐ Information Disclosure Statement
☐ PTO 1449 Form _____ Pages
☐ Prior Art References-Number of References _____
☐ Drawings _____ Sheets Formal _____ Sheets Informal _____ Sheets Amended
☐ Notice of Missing Parts
☐ Combined Declaration and Power of Attorney
☐ Small Entity Statement
☒ Other Petition to Revoke

Atty./Sec. DLF/ Client/ Genuity Inc./Initials ESK/rpk Matter Name 97-416 Date 12/5/01

PAY One thousand two hundred Eighty DOLLARS

TO THE ORDER OF

COMMISSIONER OF PATENTS AND TRADEMARKS

DATE

AMOUNT

11/29/01

1280.

FISH & RICHARDSON P.C.

53-153/112



Fleet

FLEET MAINE, N.A.
SOUTH PORTLAND, ME

BY

12/28-027001 TXK

⑈ 135883 ⑈ ⑆ 011201539⑆ 80 071 123 ⑈



FISH & RICHARDSON P.C.

c 135884

PAY Three hundred Twenty DOLLARS

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COMMISSIONER OF PATENTS AND TRADEMARKS

DATE

AMOUNT

11/29/01

320.

FISH & RICHARDSON P.C.

53-153/112



Fleet

FLEET MAINE, N.A.
SOUTH PORTLAND, ME

BY

12/28-027001 TXK

⑈ 135884 ⑈ ⑆ 011201539⑆ 80 071 123 ⑈



FISH & RICHARDSON P.C.

c 135885

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TO THE ORDER OF

COMMISSIONER OF PATENTS AND TRADEMARKS

DATE

AMOUNT

11/29/01

520.

FISH & RICHARDSON P.C.

53-153/112



Fleet

FLEET MAINE, N.A.
SOUTH PORTLAND, ME

BY

12/28-027001 TXK

⑈ 135885 ⑈ ⑆ 011201539⑆ 80 071 123 ⑈

EXHIBIT 6

Express Mail Label No. EV572274802US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors:	PICHER-DEMPSEY.	Examiner:	Nguyen, Hanh N.
Serial No.:	08/990,096	Group Art Unit:	2662
Filed:	December 12, 1997		
For:	SECURE NETWORK ARCHECTURE WITH QUALITY OF SERVICE	Docket No.	74120-301380

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF JANICE M. MESSER
TO SUPPORT PETITION TO WITHDRAW HOLDING OF ABANDONMENT
UNDER 37 C.F.R. § 1.181(a)**

1. My name is Janice M. Messer and I have been a paralegal in the Denver, Colorado, office of the law firm of Faegre & Benson LLP since May 31, 2005.
2. On or around February of 2004, the above-referenced application was transferred to Faegre & Benson LLP.
3. Faegre & Benson LLP filed a Combined Power of Attorney and Revocation of Prior Power by Assignee on July 30, 2004.
4. As part of my duties, I was asked to review all applications of the Assignee to determine status of each file. Upon review of the attorney file for the above-referenced application, it was determined that there had been no substantial action on this application since May 13, 2002, when the previous attorneys filed an Appeal Brief in response to a Notice Granting the Petition to Revive.
5. In June of 2005, I checked the USPTO Patent Application Information Retrieval system (PAIRS). At that time, PAIRS indicated that the status of the application was abandoned for failure to respond to an Office Action. However, PAIRS also indicated in the file history list that the Petition to Revive the application had been granted as evidenced by the mailing of the Notice Granting the Petition to Revive on March 12, 2002.

Express Mail Label No. EV 313994312 US


6. After checking PAIRS, I spoke with Examiner Hanh N. Nguyen and he indicated that the Appeal Brief was never received by the PTO.

7. I contacted Cassie Chandler of the previous attorneys' office, Fish and Richardson. Ms. Chandler located the postcard receipt with the stamp indicating that the Appeal Brief was received by the Board of Patent Appeals and Interferences. Ms. Chandler indicated that a Notice of Abandonment for failure to submit an Appeal Brief had not been received by her firm.

8. On August 16, 2005 I spoke with Christina Donnell at the Petitions Branch. Ms. Donnell checked her information on the application and determined that the PTO had apparently failed to receive the Appeal Brief, but that a Notice of Holding of Abandonment for failure to file the Appeal Brief had not been mailed by the PTO. Ms. Donnell indicated that, even though a Notice of Holding of Abandonment for failure to submit an Appeal Brief was never sent, nor noted in PAIRS, the application was technically held abandoned again due to failure to submit the Appeal Brief. Ms. Donnell recommended that a Petition to Withdraw Holding of Abandonment be filed with the Technology Center of the noted group art unit.

9. At no time before I spoke with Christina Donnell on August 16, 2005, was it realized that this application was possibly abandoned for failure to submit an Appeal Brief.

10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Janice M. Messer